

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HAJO OTTO,
Plaintiff,

v.

ORDER
04-CV-494

SAMUEL J. SAIA, et al.,

Defendants.

The above-referenced case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1)(B), on August 10, 2004. On September 19, 2006, Magistrate Judge Scott filed a Report and Recommendation, recommending that plaintiff's motion for summary judgment against defendant Samuel Saia on the initial Complaint be denied, without prejudice. Magistrate Judge Scott also filed a Report and Recommendation, recommending that the motion to dismiss by defendants Citizens Financial Group, Inc., Citizens Bank, N.A., f/k/a Charter One Financial, Inc., a/k/a Charter One Bank, and Gabriele Maddalena (collectively "Citizens Bank Defendants") be granted, and that plaintiff's request to convert that motion to dismiss into a motion for summary judgment be denied.

Plaintiff filed objections to both the Report and Recommendations on September 29, 2006, and the defendants filed responses thereto.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendations, and

after reviewing the submissions of the parties, the Court adopts the proposed findings of each of the Report and Recommendations.

Accordingly, for the reasons set forth in Magistrate Judge Scott's Report and Recommendations, the Court: (1) denies plaintiff's motion for summary judgment against defendant Samuel Saia on the initial Complaint, without prejudice; and (2) grants the Citizens Bank Defendants' motion to dismiss and denies plaintiff's request to convert the motion to dismiss into a motion for summary judgment.

The case is referred back to Magistrate Judge Scott for further proceedings.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: January 23, 2007